



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG- 2018-0007]**

**RIN 1625-AA87**

### **Security Zones; Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, Florida**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** On September 16, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) to establish security zones on the navigable waters of the Seventh Coast Guard District to allow the Coast Guard to restrict vessels from entering or transiting certain waters. The Coast Guard proposes amendments to its regulation by modifying the security zones in the Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, Florida and updating definitions throughout the regulation. This action is necessary for clarification of terms and geographic application of security zones in Sector Key West and Sector Miami ports allowing for more effective implementation of these regulations to protect the public and ports from potential subversive acts. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG- 2018-0007 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Samuel Rodriguez-Gonzalez, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone (305) 535-4307, email [Samuel.Rodriguez-Gonzalez@uscg.mil](mailto:Samuel.Rodriguez-Gonzalez@uscg.mil); or BMC Greg Bergstrom, Sector Key West Waterways Management Division, U.S. Coast Guard; telephone (305) 292-8772, email [Greg.C.Bergstrom@uscg.mil](mailto:Greg.C.Bergstrom@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

*A. Regulatory History and Information*

The purpose of this proposed amendment is to protect the public and ports from potential subversive acts. The amendments establish a new section for Sector Key West security zones that previously were annotated as belonging to Sector Miami; clarify when the Port Everglades fixed security zones will be in effect, modify and lengthen a portion of one Port Everglades fixed security zone; and update language and definitions throughout the regulation.

### *B. Discussion of Comments on NPRM and Changes*

On September 16, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled “Security Zones; Port of Palm Beach, Port Everglades, Port of Miami, and Port of Key West, Florida” (see 81 FR 63728). The purpose of the proposed security zone was to mitigate the aforementioned potential subversive acts at various ports in the Seventh Coast Guard District. During the comment period, we received two comments.

One comment, received by telephone, asked that security calls be placed on Channels 13 and 16. The Coast Guard will not be implementing this requested change because our broadcasts are exclusively done on Channel 16.

The second comment expressed concern that the proposed zone does not offer enough security "standoff" distance for those three berths using the coordinates listed in § 165.760(b)(3) of the proposed rule. The commenter also recommended shifting the coordinates in this berth area further east of the pier face to provide a larger security "stand off" distance. To address those concerns, we made minute changes to specific coordinates of the security zone and nomenclature updates to the geographic features listed in the NPRM. The geographic features we updated in the SNPRM are the name of the state park from John U Lloyd State Park to Von D. Mizell – Eula Johnson State Park and the description of the location from “Pier” to “Berth.” We are seeking comments for these changes from the NRPM comments. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

### **III. Discussion of the SNPRM Proposed Rule**

The fixed security zone from Mid-Port to North-Port (Berth 7 to the northern-

most section of the Port) including all waters westward at Port Everglades would be an established permanent fixed security zone that will be in effect at all times. Berthing from Berth 7 to North-Port Port Everglades regularly serves passenger vessels, vessels carrying cargoes of particular hazards, and vessels carrying liquefied hazardous gas. This permanent fixed security zone, which parallels the Intracoastal Waterway, would not limit persons or vessels from using the main entrance channel (Bar Cut) or from using the Intracoastal Waterway. This zone would not restrict persons and vessels authorized to be in the zone from maneuvering around the berths within Port Everglades between Mid-Port and North-Port. This proposed amendment clarifies that all persons and vessels not authorized to be in the zone shall remain out of the zone in order to protect the public and Port from potential subversive acts.

The fixed security zone that runs from Mid-Port south to Berth 29, just south of the Von D. Mizell – Eula Johnson State Park launching ramps, along Port Everglades and the Intracoastal Waterway, would be decreased in size to encompass only the waters westward of the Intracoastal Waterway extending to and including the pier face of Port Everglades. The fixed security zone would also lengthen southward from Berth 29, just south of the Von D. Mizell – Eula Johnson State Park launching ramps to the northern tip of the Dania Cut-Off Canal. Persons and vessels would be allowed to operate along the Intracoastal Waterway, as they are now; however, persons and vessels would not be authorized to enter the security zone westward of the Intracoastal Waterway between Mid-Port and the northern tip of the Dania Cut-Off Canal without authorization. When a passenger vessel, vessel carrying cargoes of particular hazards, or vessel carrying liquefied hazardous gas moors along this section of Port Everglades, vessels transiting

along the Intracoastal Waterway would be required to transit eastward of law enforcement vessels. This extension is needed to provide continuous protection for the public and Port because Port Everglades has expanded the entrance of the Dania Cut-Off Canal and its operations south over the years.

The term “cruise ship tenders” would be removed from the entire regulation because cruise ship tenders no longer provide security zone assistance.

The term “cruise ship” would be removed and “passenger vessels” will be redefined. Also, a “vessel carrying cargoes of particular hazards” and a “vessel carrying liquefied hazardous gas” will be defined.

As discussed above, since the implementation of Sector Miami security zones in 2003, Sector Key West was delegated its own Captain of the Port authority. Therefore, a separate section would be implemented by this proposed regulation to establish the security zone authority for Sector Key West.

These amendments are necessary for administrative reasons as noted above and to protect the public and Ports from potential subversive acts.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The economic impact of these updates and modifications to the proposed rule are not significant for the following reasons: (1) persons and vessels would still be able to operate in waters surrounding security zones; (2) the permanent fixed security zone encompassing Port Everglades from Mid-Port to North-Port is within the natural boundaries of the Port and is limited in size; (3) notification of the security zones will be made to the local maritime community via posted signs and Broadcast Notice to Mariners on VHF-FM marine channels 16 when applicable; and (4) persons and vessels may operate within the security zone if authorized by Captain of the Port Miami, Captain of the Port Key West, or a designated representative.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities:

people and the owners or operators of vessels intending to transit or remain within the security zone(s) when they are in effect. For reasons discussed in section IV. A.

Regulatory Planning and Review above, this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and

have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves amending security zones and

lengthening part of a security zone. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have

provided. For more about privacy and the docket, visit  
<http://www.regulations.gov/privacyNotice>.

Documents mentioned in this SNPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

#### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

2. Add § 165.760 to read as follows:

**§ 165.760 Security Zones; Port of Palm Beach, Port Everglades, and Port of Miami, Florida.**

(a) *Definition.* (1) As used in this section, passenger vessel is a vessel greater than 100 feet in length and over 100 gross tons that is authorized to carry more than 12 passengers for hire making voyages lasting more than 24 hours, except for a ferry.

(2) As used in this section, a vessel carrying cargoes of particular hazard is defined in 33 CFR Part 126 and a vessel carrying liquefied hazardous gas (LHG) is defined in 33 CFR Part 127.

(b) Location. The following areas are security zones. All coordinates are North American Datum 1983.

*(1) Fixed and moving security zones around vessels in the Port of Palm Beach, Port Everglades, and Port of Miami Florida.* Moving security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) during transits entering or departing the Port of Palm Beach, Port Everglades, or Port of Miami. These moving security zones are activated when the subject vessel passes: Lake Worth Lighted Buoy LW, at approximate position 26°46'22"NN, 80°00'37"W, when entering the Port of Palm Beach; passes Port Everglades Lighted Buoy PE, at approximate position 26°05'30"N, 080°04'46"W, when entering Port Everglades; and passes Miami Lighted Buoy M, at approximate position 25°46'05"N, 080°05'01"W, when entering Port of Miami. These moving security zones remain active whenever a passenger vessel, vessels carrying cargoes of particular hazard, or vessels carrying LHG is underway westward of the above mentioned buoys. Fixed security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying LHG, while the vessel is moored in the Port of Palm Beach, Port Everglades, or Port of Miami, Florida. Persons and vessels may pass within 100 yards of a moored passenger vessel, vessel carrying cargoes of particular hazard, or vessel carrying LHG that is moored within or alongside a federal channel as long as the passage occurs outside of the on scene law enforcement vessel. Persons and

vessels shall pass north of the on scene law enforcement vessel when north of the Port of Miami, south of the on scene law enforcement vessel when south of the Port of Miami and east of the on scene law enforcement vessel in Port Everglades.

(2) *Fixed security zone in Port of Miami, Florida.* A fixed security zone encompasses all waters between Watson Park and Star Island from the MacArthur Causeway south to Port of Miami. The western boundary is formed by an imaginary line from points 25°46'45"N, 080°10'52"W, northwest to 25°46'46"N, 080°10'54"W, northeast to 25°46'53"N, 080°10'50"W, and extending northeast ending at Watson Island at 25°47'00"N, 080°10'40"W. The eastern boundary is formed by an imaginary line approximately 100 yards west of the Fisher Island Ferry terminal, in approximate position 25°46'20"N, 080°09'07"W, extending southwest across the Main Channel to Port of Miami, at 25°46'16"N, 080°09'11"W. The fixed security zone is in effect when two or more passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying LHG, enter or moor within this zone.

(i) When the security zone is in effect, persons and vessels shall not enter or transit the security zone along the Miami Main Channel unless authorized by Captain of the Port of Miami or a designated representative.

(ii) Persons and vessels may transit the Miami Main Channel when only one passenger vessel, one vessel carrying cargoes of particular hazard or one vessel carrying LHG is berthed.

(iii) Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(3) *Fixed security zones in Port Everglades.* A fixed security zone encompasses Mid-Port to North-Port in Port Everglades and includes all waters west of an imaginary line starting at the southernmost point 26°05'24"N, 080°06'57"W, on the northern tip of Berth 22, to the northernmost point 26°06'01"N, 080°07'09"W, near the west side of the 17th Street Bridge and then move west to the northwestern most point at 26°06'01"N, 080°07'10" W. An additional fixed security zone encompasses the waters west of the Intracoastal Waterway to the pier face of Port Everglades from Mid-Port south to the northern tip of the Dania Cut-Off Canal and includes the waters westward of the line connecting the following points to the pier face of Port Everglades: starting at 26°05'25"N, 080°06'58"W, on the northern tip of Berth 22 at Mid-Port, to a point directly east along the Intracoastal Waterway, 26°05'25"N, 080°06'54"W, then southeast along the Intracoastal Waterway to 26°05'10"N, 080°06'49"W, then southwest along the Intracoastal Waterway to 26°04'43"N, 080°06'53"W, then south along the Intracoastal Waterway to 26°03'54"N, 080°06'52"W, and then west to the Port Everglades pier face just north of the Dania Cut-Off Canal at 26°03'54"N, 080°06'55"W.

(i) Persons and vessels may transit the Intracoastal Waterway; however, persons and vessels are not authorized to enter the fixed security zone westward of the Intracoastal Waterway without authorization from Captain of the Port Miami or a designated representative. On occasion, a passenger vessel, vessel carrying cargoes of particular hazard, or vessel carrying LHG may moor and encroach into the Intracoastal Waterway. When this occurs, persons and vessels shall transit the Intracoastal Waterway east of the on scene law enforcement vessel.

(ii) Periodically, vessels may be required to temporarily hold their positions while large commercial traffic operates in this area. Vessels near the security zone must follow the orders of the Captain of the Port or the designated representative.

(iii) Law enforcement vessels can be contacted on VHF Marine Band Radio, Channel 16 (156.8 MHz).

(c) *Regulations.* (1) Prior to commencing any movement, the person directing the movement of a passenger vessel, a vessel carrying cargoes of particular hazard, or a vessel carrying LHG is encouraged to make a security broadcast on VHF Marine Band Radio Channel 16 (156.8 MHz) to advise mariners of the moving security zone activation and intended transit.

(2) In accordance with the general regulations Section 165.33 of this part, entry into these zones is prohibited, except as authorized by the Captain of the Port of Miami or a designated representative. Vessels such as pilot boats, tug boats, and contracted security vessels may assist the Coast Guard Captain of the Port by monitoring these zones strictly to advise mariners of the restrictions. The Captain of the Port will notify the public of the security zone via signs or by Marine Safety Radio Broadcasts on VHF Marine Band Radio Channel 16 (156.8 MHz) when applicable.

(3) Persons and vessels desiring to enter or transit the fixed or moving security zones may contact the Captain of the Port Miami at (305) 535-4472 or on VHF Marine Band Radio Channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or the designated representative.

(4) The Captain of the Port Miami may waive any of the requirements of this subpart for any vessel upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this subpart is unnecessary or impractical for the purpose of port security, safety, or environmental safety.

3. Revise § 165.761 to read as follows:

§ 165.761 Security Zones; Port of Key West, Florida.

(a) *Definition.* (1) As used in this section, passenger vessel is a vessel greater than 100 feet in length and over 100 gross tons that is authorized to carry more than 12 passengers for hire making voyages lasting more than 24 hours, except for a ferry.

(2) As used in this section, a vessel carrying cargoes of particular hazard is defined in 33 CFR Part 126 and a vessel carrying liquefied hazardous gas (LHG) is defined in 33 CFR Part 127.

(b) *Location.* The following area is a security zone. Fixed and moving security zones around vessels in the Port of Key West, Florida. A moving security zones is established 100 yards around all passenger vessels, vessels carrying cargoes of particular hazard, or vessels carrying liquefied hazardous gas (LHG) during transits entering or departing the Port of Key West, Florida. A moving security zones is activated when the subject vessel passes Key West Entrance Lighted Whistle Buoy KW, at approximate position 24°27'26"N, 081°48'00"W. This moving security zone remains active whenever a passenger vessel, vessels carrying cargoes of particular hazard, or vessels carrying LHG is underway westward of the above mentioned buoys. Fixed security zones are established 100 yards around all passenger vessels, vessels carrying cargoes of particular

hazard, or vessels carrying LHG, while the vessel is moored in the Port of Key West, Florida.

(c) *Regulations.* (1) Prior to commencing any movement, the person directing the movement of a passenger vessel, a vessel carrying cargoes of particular hazard, or a vessel carrying LHG , is encouraged to make a security broadcast on VHF Marine Band Radio, Channel 16 (156.8 MHz) to advise mariners of the moving security zone activation and intended transit.

(2) In accordance with the general regulations Section 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port of Key West or a designated representative. Vessels such as pilot boats, tug boats, and contracted security vessels may assist the Coast Guard Captain of the Port by monitoring these zones strictly to advise mariners of the restrictions. The Captain of the Port will notify the public of the security zone via signs or by Marine Safety Radio Broadcasts on VHF Marine Band Radio, Channel 16 (156.8 MHz) when applicable.

(3) Persons and vessels desiring to enter in, transit through, anchor in, or remain within the fixed or moving security zones may contact the Captain of the Port Key West at (305) 292-8727 or on VHF Marine Band Radio Channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or the designated representative.

(4) The Captain of the Port Key West may waive any of the requirements of this subpart for any vessel upon finding that the vessel or class of vessel, operational conditions, or other circumstances are such that application of this subpart is unnecessary or impractical for the purpose of port security, safety, or environmental safety.

Dated: February 4, 2019

P. J. Brown

Rear Admiral, U.S. Coast Guard,

Commander, Seventh Coast Guard District.

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